

CITATION: Kostelnik (Re), 2024 BCSRE 33

Date: 2024-05-29

File # 17-690

BC FINANCIAL SERVICES AUTHORITY

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended

AND

IN THE MATTER OF

TERESA DAWN KOSTELNIK also known as
SUNNY DAWN KOSTELNIK
(115430)

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENT: Teresa Dawn Kostelnik (also known as Sunny Dawn Kostelnik), trading services representative, 2 Percent Realty Sunshine Coast Inc. (doing business as 2 Percent Realty Pacific Coast)

DATE OF CONSENT ORDER: May 29, 2024

COUNSEL: Leslie W. Woo, Legal Counsel for the BC Financial Services Authority
Kyle Bienvenu, Legal Counsel for the Respondent

PROCEEDINGS:

On May 29, 2024, the Superintendent of Real Estate (the "Superintendent"), or the Superintendent's authorized delegate, of BC Financial Services Authority ("BCFSA") accepted the Consent Order Proposal (the "Proposal") submitted by Teresa Dawn Kostelnik ("T. Kostelnik").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by T. Kostelnik.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that T. Kostelnik committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA") and sections 3-3(i) and 5-9(4) and (5) of the *Real Estate Services Rules* (the "Rules"), pursuant to section 43 of the RESA the Superintendent orders that:

1. T. Kostelnik pay a discipline penalty to BCFSA in the amount of \$50,000 within three (3) months from the date of this Order;
2. T. Kostelnik, at their own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by the Sauder School of Business at the University of British Columbia in the time period as directed by BCFSA; and
3. T. Kostelnik pay enforcement expenses to BCFSA in the amount of \$4,525 within two (2) months from the date of this Order.

If T. Kostelnik fails to comply with any term of this Order, the Superintendent may suspend or cancel their licence without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 29th day of May, 2024 at the City of Vancouver, British Columbia.

Superintendent of the BC Financial Services Authority

"Original signed by Jonathan Vandall"

Jonathan Vandall
Delegate of the Superintendent of Real Estate
Province of British Columbia

Attch.

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *REAL ESTATE
SERVICES ACT*
SBC 2004, c 42 as**

AMENDED IN THE

MATTER OF

**TERESA DAWN KOSTELNIK
also known as SUNNY DAWN
KOSTELNIK
(115430)**

**CONSENT ORDER PROPOSAL BY
TERESA DAWN KOSTELNIK**

BACKGROUND AND FACTS

This Consent Order Proposal (the “**Proposal**”) is made by Teresa Dawn Kostelnik also known as Sunny Dawn Kostelnik (“**T. Kostelnik**”) to the Superintendent of Real Estate (the “**Superintendent**”) of the BC Financial Services Authority (“**BCFSA**”) pursuant to section 41 of the *Real Estate Services Act* (“**RESA**”).

For the purposes of the Proposal, T. Kostelnik, and the Superintendent have agreed upon the following facts:

1. T. Kostelnik (115430) was licensed as a trading and rental services representative between September 1994 and August 1997. Since 1997, T. Kostelnik has been licensed as a trading service representative, except for a period of being unlicensed between October 2018 and January 2019.
2. T. Kostelnik was at all relevant times licensed as a trading services representative with Molloy Pemberton Agencies Ltd. dba RE/MAX Powell River (the “**Brokerage**”).
3. T. Kostelnik and her husband, [Individual 1] (“**[Individual 1]**”), were friends with [Buyer 1] and [Buyer 2] (the “**Buyers**”) since 2013.

4. At all relevant times, the Buyers were aware that T. Kostelnik and [Individual 1] were married.
5. In and around July 2017, T. Kostelnik represented the Buyers in the Buyers' attempt to purchase a property located at [Property 1].
6. [Individual 1] was the owner of [Property 2], Powell River (the "**[Property 2] Property**").
7. On at least two prior occasions, the Buyers had stayed at [Property 2] when visiting Powell River, BC.
8. In and around September 2017, the Buyers asked T. Kostelnik if [Individual 1] would sell them [Property 2]. T. Kostelnik advised the Buyers that [Individual 1] would consider selling [Property 2] to the Buyers.
9. On October 20, 2017, [Property 2] was listed for sale on the Multiple Listing Service (the "**Listing**"). The Listing indicated that T. Kostelnik was the listing agent.
10. On October 22, 2017, the Buyers and [Individual 1] entered into a Contract of Purchase and Sale for [Property 2] (the "**[Property 2] Contract**").
11. The [Property 2] Contract indicated that T. Kostelnik represented only the Buyers and the designated agency for [Individual 1] was blank. However, T. Kostelnik represented both the Buyers and [Individual 1] with respect to the [Property 2] Contract.
12. T. Kostelnik did not disclose an interest in trade, in the approved form, before the Buyers and [Individual 1] entered into the [Property 1] Contract.
13. On December 6, 2017, the Buyers, [Individual 1] and the Brokerage entered into a Limited Dual Agency relationship with the intention that T. Kostelnik be the designated agent.
14. On December 6, 2017, the Buyers and [Individual 1] signed an addendum to the [Property 2] Contract removing the subjects, including the removal of the financing condition.
15. On January 2, 2018, the Buyers informed T. Kostelnik that they were unable to secure financing and could not complete the transaction (the "**Failed Offer**").
16. In or about March 2019, T. Kostelnik received notice of a complaint and investigation by the Real Estate Council of British Columbia related to her

- representation of the Buyers on the sale of [Property 2].
17. On February 11, 2020, [Individual 1] initiated litigation against the Buyers in relation to the Failed Offer. The litigation was resolved through settlement on May 4, 2022.
 18. A Notice of Discipline Hearing was issued on October 10, 2023, and served on October 25, 2023.
 19. T. Kostelnik has no discipline history.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, T. Kostelnik proposes the following findings of misconduct be made by the Superintendent:

1. T. Kostelnik committed professional misconduct under section 35(1)(a) of the RESA, in that, while licensed as a representative with RE/MAX Powell River and while acting as an agent for [Buyer 1] and [Buyer 2] (collectively, the “**Buyers**”) in and around October 2017 she:
 - a. failed to take reasonable steps to avoid any conflict of interest when she provided real estate services to the Buyers in regard to a property located at [Property 2], Powell River, British Columbia (the “Property”) despite her financial interest in the Property and while at the same time acting as a designated agent for the seller, who was her husband (the “Seller”) contrary to the Rules, section 3-3(i) [*Duty to avoid any conflict of interest*];
 - b. failed to promptly disclose an interest in trade, in a form approved by BCFSa, before an agreement for the acquisition of the Property was entered into contrary to the Rules, section 5- 9(4) and (5) [*Disclosure of interest in trade*].

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, T. Kostelnik proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the Superintendent, pursuant to section 43 of the RESA:

1. T. Kostelnik pay a discipline penalty to BCFSA in the amount of \$50,000 within three (3) months from the date of this Order.
2. T. Kostelnik at their own expense, register for and successfully complete the Real Estate Trading Services Remedial Education course as provided by Sauder School of Business at the University of British Columbia in the time period as directed by BCFSA.
3. T. Kostelnik pay enforcement expenses to BCFSA in the amount of \$4,525 within two (2) months from the date of this Order.
4. If T. Kostelnik fails to comply with any of the terms of this Order, the Superintendent may suspend or cancel T. Kostelnik's licence without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. T. Kostelnik acknowledges and understands that the Superintendent may accept or reject the Proposal. If the Proposal is rejected by the Superintendent, the matter may be referred to a disciplinary hearing.
2. T. Kostelnik acknowledges that they have been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the Superintendent; and, that they have obtained independent legal advice or has chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. T. Kostelnik acknowledges and is aware that BCFSA will publish the Proposal and the Consent Order or summaries thereof on BCFSA's website, on CanLII, a website for legal research and in such other places and by such other means as BCFSA in its sole discretion deems appropriate.

4. T. Kostelnik hereby waives their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, T. Kostelnik will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict T. Kostelnik from making full answer and defence to any civil or criminal proceeding(s).
6. The Proposal and its contents are made by T. Kostelnik for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of T. Kostelnik in any civil proceeding with respect to the matter.

“Original signed by Teresa Kostelnik”

Teresa Dawn Kostelnik
also known as Sunny Dawn
Kostelnik

Dated 28 day of May, 2024